

**RESOLUTION AUTHORIZING  
FOREBEARANCE OF TERMINATION OF PILOT AGREEMENT  
BIRCHWOOD VILLAGE LIMITED PARTNERSHIP PROJECT**

A regular meeting of Ulster County Industrial Development Agency (the "Agency") was convened in public session at the offices of the Agency located at 5 Development Court in the City of Kingston, Ulster County, New York on February 8, 2012 at 8:00 o'clock a.m., local time.

The meeting was called to order by the Chairperson and, upon roll being called, the following members of the Agency were:

**PRESENT:**

David O'Halloran	Chairperson
John Morrow	Secretary
Stephen Perfit	Treasurer
Paul Colucci	Assistant Chairperson/Assistant Secretary
Mike Horodyski	Assistant Chairperson/Assistant Secretary
Robert Kinnin	Assistant Chairperson/Assistant Secretary

**ABSENT:**

James Malcolm	Assistant Chairperson/Assistant Secretary
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**THE FOLLOWING PERSONS WERE ALSO PRESENT:**

Lance Matteson	Chief Executive Officer
Lisa Fadelici	Chief Financial Officer
Linda Clark	Administrative Assistant
A. Joseph Scott, III, Esq.	Agency and Bond Counsel

The following resolution was offered by Paul Colucci, seconded by Mike Horodyski, to wit:

RESOLUTION AUTHORIZING A FOREBEARANCE PERIOD BEFORE THE  
TERMINATION OF THE PILOT AGREEMENT IN CONNECTION WITH THE  
BIRCHWOOD VILLAGE LIMITED PARTNERSHIP PROJECT.

WHEREAS, Ulster County Industrial Development Agency (the "Agency") is authorized and empowered by the provisions of Chapter 1030 of 1969 Laws of New York, constituting Title 1 of Article 18 A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act") and Chapter 787 of the 1976 Laws of New York, as amended, constituting Section 923 of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to issue its revenue bonds to finance the cost of the acquisition, construction, reconstruction and equipping of one or more "projects" (as defined in the Act), to acquire, construct, reconstruct and equip said projects or to cause said projects to be acquired, constructed, reconstructed and equipped, and to convey said projects or to lease said projects (with an obligation to purchase); and

WHEREAS, on May 28, 2004, the Agency entered into a lease agreement dated as of May 1, 2004 (the "Lease Agreement") between the Agency and Birchwood Village Limited Partnership (the "Company") for the purpose of assisting the Company in undertaking a project (the "Project") and to grant the Company certain "financial assistance" under the Act; and

WHEREAS, the Project is described as follows: (A) (1) the acquisition of an interest in certain real estate containing approximately 3.479 acres located at 164-174R Flatbush Avenue in the City of Kingston, Ulster County, New York (the "Land"), (2) the construction of 12 buildings to contain in the aggregate approximately 87,060 square feet of space (the "Facility") and (3) the acquisition and installation thereon and therein of certain machinery and equipment located therein and thereon (the "Equipment") (the Land, the Facility and the Equipment hereinafter collectively referred to as the "Project Facility"), all of the foregoing to constitute an 80 unit affordable housing complex to be owned by the Company and leased to residential tenants; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from sales taxes, real property transfer taxes, mortgage recording taxes and real estate taxes (collectively, the "Financial Assistance"); and (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, simultaneously with the execution of the Lease Agreement, the Company and the Agency executed and delivered a payment in lieu of tax agreement dated as of May 1, 2004 (the "Payment in Lieu of Tax Agreement") by and between the Agency and the Company, pursuant to which the Company agreed to pay certain payments in lieu of taxes with respect to the Project Facility; and

WHEREAS, the Agency has been advised by the City of Kingston that the Company has defaulted in its obligations to make payments in lieu of taxes with respect to the Project Facility under the Payment in Lieu of Tax Agreement; and

WHEREAS, the Company has advised the Agency that the Company has been in negotiations with the City of Kingston and has engaged in litigation with the City of Kingston regarding certain issues raised by the Company with respect to the Payment in Lieu of Tax Agreement; and

WHEREAS, staff and counsel of the Agency have also had numerous discussions with representatives of the Company and the City of Kingston to attempt to resolve the issues raised by the Company; and

WHEREAS, the Agency has authorized the sending of a letter formally notifying the Company and its lender of the default under the Payment in Lieu of Tax Agreement, as required under the terms of the Payment in Lieu of Tax Agreement and such letter has been sent to the Company and its lender; and

WHEREAS, one of the remedies available to the Agency under the Payment in Lieu of Tax Agreement is to provide for the termination of the Payment in Lieu of Tax Agreement and the conveyance of the Agency's interest in the Project Facility from the Agency back to the Company, and, upon such conveyance, the Project will be subject to real property taxation;

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF ULSTER COUNTY INDUSTRIAL DEVELOPMENT AGENCY, AS FOLLOWS:

Section 1. The Agency finds and determines as follows: (A) that notice of the defaults under the Payment in Lieu of Tax Agreement have been provided to the Company in accordance with the terms of the Payment in Lieu of Tax Agreement, and (B) that the Company remains in default under the Payment in Lieu of Tax Agreement. Accordingly, the Agency is ready and hereby authorized to continue exercising its remedies under the Payment in Lieu of Tax Agreement, including the termination of the Payment in Lieu of Tax Agreement.

Section 2. The Agency hereby determines to forebear the exercise of its rights under the Payment in Lieu of Tax Agreement, and authorizes a forbearance period as follows:

(A) That Agency staff and/or Agency Counsel sends written notice of its determination to terminate the Payment in Lieu of Tax Agreement to Ulster County, the Kingston City School District and the City of Kingston.

(B) (1) That the Company pays to the Agency the administrative fee and counsel fees of the Agency no later than Thursday, February 9, 2012 at 4:00 p.m., local time;

(2) That the Company pays to Ulster County, the City of Kingston and the Kingston City School District the amount of unpaid real estate taxes, interest and penalties for the 2010 fiscal year and 2010-2011 fiscal year, as applicable, no later than Wednesday, February 15, 2012 at 4:00 p.m., local time; and

(3) If the payments are not timely received, the forbearance period provided in this Resolution shall end.

(C) In any event, the forbearance period will end and the Agency shall terminate the Payment in Lieu of Tax Agreement on April 13, 2012, unless the Company has cured all the defaults under the Payment in Lieu of Tax Agreement by April 12, 2012.

Section 3. The Chairman, Vice Chairman and/or Chief Executive Officer of the Agency is hereby authorized and directed to distribute copies of this Resolution to the Company and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

Section 4. This Resolution shall take effect immediately.

The question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

David O'Halloran	VOTING	<u>Yes</u>
John Morrow	VOTING	<u>Yes</u>
Stephen Perfit	VOTING	<u>Yes</u>
Paul Colucci	VOTING	<u>Yes</u>
Mike Horodyski	VOTING	<u>Yes</u>
Robert Kinnin	VOTING	<u>Yes</u>
James Malcolm	VOTING	<u>Absent</u>

The foregoing Resolution was thereupon declared duly adopted.

STATE OF NEW YORK       )  
  ) SS.:  
COUNTY OF ULSTER       )

I, the undersigned (Assistant) Secretary of Ulster County Industrial Development Agency (the "Agency"), DO HEREBY CERTIFY that I have compared the foregoing annexed extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on February 8, 2012 with the original thereof on file in my office, and that the same is a true and correct copy of said original and of such Resolution contained therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that (A) all members of the Agency had due notice of said meeting; (B) said meeting was in all respects duly held; (C) pursuant to Article 7 of the Public Officers Law (the "Open Meetings Law"), said meeting was open to the general public, and due notice of the time and place of said meeting was duly given in accordance with such Open Meetings Law; and (D) there was a quorum of the members of the Agency present throughout said meeting.

I FURTHER CERTIFY that, as of the date hereof, the attached Resolution is in full force and effect and has not been amended, repealed or rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency this 9<sup>th</sup> day of February, 2012.

  
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(Assistant) Secretary

(SEAL)